

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-89-088

PAUL BATES, et al.,

Plaintiffs

v.

COMMISSIONER,  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,

Defendants

COURT MASTER'S PROGRESS  
REPORT PURSUANT TO  
PARAGRAPH 299

The following report covers the period from September 1, 2014 to July 31, 2015. An Interim Report was filed on November 25, 2014 dealing solely with Riverview Psychiatric Center and the site visit report of Elizabeth Jones dated September 3, 2014.

### **Riverview Psychiatric Center**

On February 27, 2015, representatives of the Department and Riverview appeared before the Court and responded to the site visit report of Elizabeth Jones with a plan of correction. At that time, I reviewed the then current operation of the hospital. No specific action was taken but another site visit has been scheduled for September 22-25, 2015 to review Riverview's progress in implementing the plan of correction. It is anticipated that the Court will schedule a conference in October or November to consider the findings resulting from the site visit.

The budget and staffing improvements identified in the plan of correction have largely been supported by the Maine Legislature's enactment of the supplemental budget for FY15 and the biennial budget for FY 16 and 17. In the biennial budget, the Legislature accepted the Governor's proposal for additional support and, in the General Fund and Disproportionate Share Fund, appropriated a total of more than \$4 Million per year for additional hospital personnel. This increased funding will enable the hospital to add a pharmacist, eight nurses, six mental health workers, sixteen acuity specialists, an occupational therapist, an investigator, a recruiting specialist, a director of quality and informatics, a manager of process improvement, a director of supported education, and the ability to convert four contract psychiatrists to full-time employees. In short, the resources outlined in the plan of correction have been provided in full and it is up to the Department and the management staff at Riverview to execute their plan. Their progress and success will be the focus of the September site visit.

The Department also proposed that the Legislature fund up to sixteen secure community treatment beds plus a fifty-bed Behavioral Assessment Safety Evaluation (BASE) Unit to address the hospital's needs in serving the forensic population and facilitate the process of regaining CMS certification. The secure residences were designed to house those members of the NCR

population who do not require a hospital level of care but who remain in the custody of the Commissioner. The BASE unit would insure that persons entering the Commissioner's custody for forensic purposes would be admitted to Riverview only after a safety assessment and a determination that they require a hospital level of care. The Legislature declined to appropriate the funds requested by the Department to support either of these proposals.

Operationally, the hospital has improved in the sense that intervention by law enforcement has been drastically reduced and there has been no use of correctional measures on clients such as occurred in the past. The hospital, however, has operated with a reduced clientele while waitlists exist, particularly for forensic services. For example on July 20, nine forensic clients awaited inpatient observation and one client who had been found incompetent to stand trial awaited admission at a time when the hospital had a total of seven beds available on the forensic units. In addition, there were five jail transfers waiting for services on the forensic unit. On the civil side of the hospital, there were three civil referrals waiting at a time when there were fifteen beds available on the civil units. For the most part, in recent months the hospital has operated at less than 80% of its total capacity at a time when waitlists exist for its services. It identifies acuity levels and staffing shortages, including those occasioned by family medical leave, as the basis for its reduced census. Based on reported incidents of seclusion, restraint and psychiatric emergencies, subject to review in September, there is strong evidence that acuity levels remain high, particularly on Lower Saco, the admission unit for forensic clients. The enhanced staffing provided under the biennial budget, particularly, the addition of the acuity specialists, should enable the hospital to resume making full, or at least a substantially improved use of its 92-bed capacity by the end of September.

There is one caveat that should be noted regarding the increased budget support. Roughly \$1.4 Million of the \$4 Million addition is appropriated from federal Disproportionate Share Funding. CMS has decertified the hospital and declared it ineligible to receive federal funding. That ruling is under appeal and the hospital is pursuing recertification. The hospital, nonetheless, continues to collect Disproportionate Share Funding, although, depending on the results of the appeal or recertification, funding may be terminated and subject to repayment. Presumably, the Legislature would provide supplemental funding if that were to occur.

The Department was successful in obtaining legislative approval for a clinical process to allow the use of forced medication for forensic clients under certain limited circumstances. Such a process already exists for civil clients and this legislation should assist the hospital in dealing with severe behavioral issues in the forensic units. LD 1391 was enacted by the Legislature as an emergency measure but is currently included among the items of legislation that are involved in the debate over the timely exercise of the veto.

## **Developments in Community Mental Health**

The biennial budget produced positive results for clients receiving services in the community. The Legislature appropriated \$5,797,300 in each year for mental health services for those who are ineligible for MaineCare. In past years, the funding has been granted only intermittently and in part. On this occasion, the Legislature included the full amount proposed

by the Governor and included it in the base budget. The Legislature also appropriated an additional \$1,233,947 for rental assistance (BRAP) for each year, bringing the total annual BRAP budget to \$6,606,361. The Department is now positioned to make substantial improvements in the most serious problem in the community mental health system—access to services.

The Department has devoted considerable effort in the past year to improving the time involved in assigning a case worker for persons with severe and persistent mental illness seeking services. Unfortunately, despite their best efforts, the number of clients continues to grow and waitlists persist, with delay at unacceptable levels. In past progress reports, I have repeatedly expressed concern about the inordinate delay experienced by many clients and the failure of many providers to even come close to meeting the time standards of the Consent Decree for the assignment of a caseworker. Thus far a solution has proved elusive and the causes for delay appear multifaceted. The process improvement efforts of the Department have demonstrated that unless a case worker is assigned within days of a request for service, it is often very difficult, if not impossible to locate and engage with the client thereafter. This fact may speak to the wisdom of some form of open and immediate access. I am currently exploring possible solutions with the Office of Adult Mental Health and developments will be reported in the future. The additional funding referenced above should be helpful in improving service access but efforts thus far have demonstrated that more than money is required. This conclusion is borne out by the fact that waitlists for services exist almost to a similar degree among clients who are covered under MaineCare. Clearly, a more comprehensive approach is required. Prompt assignment of a case worker, the most basic form of mental health service, must be the immediate goal of the Department if it is to achieve reasonable compliance with the Consent Decree.

Finally, it is important to note that the Legislature provided \$1,420,000 annually for residential treatment for forensic clients who may not meet medical criteria for federal funding. All in all, the financial support for mental health services is improved and the focus of the Department should now switch to effectively executing the improvements that the funding is designed to facilitate.

Dated: August 3, 2015

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Daniel E. Wathen, Court Master